

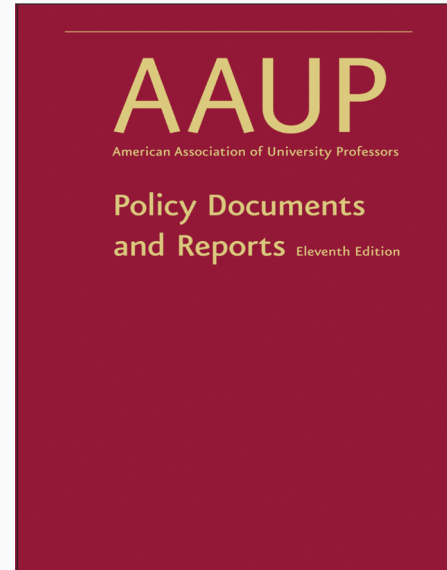
Academic Freedom Language for Handbooks

September 17, 2021

Anita Levy and Mark Criley
Senior Program Officers
Department of Academic Freedom, Tenure, and Governance
academicfreedom@aaup.org

The 2015 “Redbook”

- Official title: *Policy Documents and Reports*
- Significantly enlarged
- Updated statistical and legal Information
- Larger number of sections that are more thematically organized
- Makes an excellent gift for new administrators



Four Essential Redbook Documents

- *1940 Statement of Principles on Academic Freedom and Tenure*
- *Statement on Government of Colleges and Universities**
- *Recommended Institutional Regulations on Academic Freedom and Tenure*
- *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*

1940 *Statement of Principles on Academic Freedom and Tenure*

- The AAUP's most significant policy document
- Joint formulation of the AAUP and the Association of American Colleges and Universities (AAC&U)
- Endorsed by more than 250 scholarly societies and higher-education organizations
- Represents a consensus in American higher education about the meaning and purpose of academic freedom and tenure
- Incorporated in hundreds of faculty handbooks and collective bargaining agreements

1940 *Statement of Principles on Academic Freedom and Tenure*

The preamble summarizes the argument for tenure:

- “Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its expression.”
- “Academic freedom is essential to these purposes.”
- “Tenure is a means to certain ends, specifically (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability.”

1940 *Statement of Principles on Academic Freedom and Tenure*

What exactly is academic freedom?

- “Teachers are entitled to full freedom in research and in the publication of the results....”
- “Teachers are entitled to freedom in the classroom in discussing their subjects....”
- “College and university teachers are citizens, members of learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline....”

1940 *Statement of Principles on Academic Freedom and Tenure*

- The AAUP's conception of academic freedom is tied **not** to the First Amendment but to the special **professional role** of instructors and scholars in higher education.
- Some speech **may** be the basis for adverse action, even if it falls short of the usual free speech exemptions (e.g., speech demonstrating disciplinary incompetence).

1940 *Statement of Principles on Academic Freedom and Tenure*

The section on academic tenure:

- “After the expiration of a probationary period, teachers or investigators [researchers] should have permanent or continuous tenure, and their service should be terminated only for adequate cause...”
- “Beginning with appointment to the rank of full-time instructor...the probationary period should not exceed seven years....”
- “Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution” in a hearing of record

1940 *Statement of Principles on Academic Freedom and Tenure*

Why should you incorporate the 1940 *Statement* into your faculty handbook?

- It provides **authoritative definitions of key principles** that will govern your professional life at the institution
- It provides **definitions that the institution has agreed upon**, if not endorsed, by incorporating them
- It **recognizes the authority of the AAUP** on these matters
- **Its presence in the faculty handbook implies that other AAUP standards may be applicable**

1940 *Statement of Principles on Academic Freedom and Tenure*

(Descending order, from best to worst)

- In full, including the 1940 Interpretations and the 1970 Interpretive Comments, with the endorsement of the governing board
- In full, with endorsement by the institution
- The preamble and section on academic freedom
- The preamble
- The section on academic freedom
- By reference

Academic Freedom and Academic Due Process

There are other reports and statements concerning academic freedom that are worthy of your consideration. (See the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, *Freedom in the Classroom*, *The Freedom to Teach*, and the *Committee A Statement on Extramural Utterances*.)

But we turn now to the due process protections without which academic freedom is impossible.

Recommended Institutional Regulations on Academic Freedom and Tenure (2018)

- As its introduction states, the *RIR* are designed to be incorporated verbatim into an institution's regulations.
- Of the sixteen regulations, the most essential are Regulations 5, 4c, and 4d
 - Regulation 5, "Dismissal Procedures"
 - Regulation 4c, "Financial Exigency"
 - Regulation 4d, "Discontinuance of Program or Department for Educational Reasons"

Involuntary Terminations of Appointment

Under AAUP standards, there are only **three legitimate bases for terminating a faculty appointment: dismissal for cause, financial exigency, and program discontinuance** for educational reasons

- Regulation 5 prevents administrations from terminating appointments for bogus **cause**
- Regulation 4c prevents terminations for bogus **financial reasons**
- Regulation 4d prevents terminations for bogus **educational reasons**

Regulation 5: “Dismissal Procedures”

- Sets forth AAUP-recommended procedures for dismissing for cause a tenured faculty member or a full-time faculty member before the expiration of a term appointment.
- If your faculty handbook lacks these procedures, or the key elements thereof, your institution at best has Tenure In Name Only
- Of its nineteen provisions, the most essential ones are
 - A hearing before an elected faculty body (5c)
 - Burden of proof on the administration for demonstrating adequate cause (5c[8])

Regulation 4c: Financial Exigency

Contains three basic kinds of standards:

- Those that ensure that the collective faculty plays an appropriate role in all decision-making (governance)
- Those that impose additional procedural constraints (notice and protection of tenure)
- Those that ensure that affected faculty members may contest the decision with an elected faculty hearing body (due process)

Regulation 4c: Financial Exigency

Definition: “A **severe financial crisis** that fundamentally compromises the academic integrity of the institution **as a whole** and that cannot be alleviated by less drastic means” than terminating faculty appointments.

Regulation 4c contains a list of representative “less drastic means.”

Regulation 4c: Faculty Involvement

Regulation 4c requires **informed** faculty participation in every phase of decision-making related to the declaration of financial exigency, the reduction or closing of programs, and the criteria governing terminations.

Regulation 4c: Procedural Constraints

- Faculty members will promptly be informed in writing and provided at least thirty days to respond.
- A tenured faculty appointment should not be terminated before an untenured appointment except in extraordinary circumstances.
- New appointments should not be made except in extraordinary circumstances.

Regulation 4d: Discontinuance of Program or Department for Educational Reasons

“The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, **as determined primarily by the faculty** as a whole or an appropriate committee thereof.”

“Educational considerations’ **do not include cyclical or temporary variations in enrollment**. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.”

Regulation 4d: Procedural Constraint

Faculty members whose departments are being **considered** for discontinuance should be so informed and given thirty days to respond.

Regulations 4c and 4d: Individual Faculty Rights



- The institution will make “every effort” to find an affected faculty member another **suitable position** within the institution.
- Affected faculty members have the **right to a hearing before a faculty body**:
 - Previous faculty judgments on issues are “presumptively valid.”
 - But the **burden of proof** on other issues rests with the **administration**.
- **Severance salary or notice**, and **recall rights**.



Other important due process protections

Regulation 7a: the right to a dismissal-type hearing for a severe sanction (e.g., suspension)

Regulation 7b: the right to grieve the imposition of a minor sanction (e.g., a letter of reprimand) before an elected faculty committee

Regulation 16: the right to grieve to an elected faculty committee “on any matter”

Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments

- Applies to all faculty on full-time, renewable term appointments
- Elaborates procedural rights set out in Regulations 2 and 10 of the *RIR*
- Purpose is to protect the academic freedom of full-time faculty members without tenure

Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments

Key rights of a nonrenewed full-time faculty member:

- A written statement of the reasons for the nonrenewal, if requested
- Timely notice of nonrenewal, based on length of service
- Opportunity to petition a faculty body to review allegations of inadequate consideration, academic freedom violations, or discrimination

Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments

What to aim to incorporate, in descending order:

- The entire statement, verbatim.
- The basic standards on the previous slide—reasons, timely notice, and review—applied to all full-time faculty members
- The basic standards on the previous slide—reasons, timely notice, and review—applied to all tenure-track faculty members

Regulation 13: Part-Time Faculty Appointments

Regulation 13—which has been revised since the 2015 Redbook—provides modified academic due process protections for part-time faculty. The baseline is that **all** faculty should receive basic due-process protections and procedures. From footnote 14:

“There should be no **invidious distinctions** between those who teach and/or conduct research in higher education, regardless of whether they hold full-time or part-time appointments or whether their appointments are tenured, tenure-track, or contingent. All faculty members should have access to the same **due-process protections and procedures**; Regulations 1–10, 12, and 16 therefore apply to all faculty members.”

Regulation 13: Part-Time Faculty Appointments

- But Regulation 13 states a few modification of those standards for part-time appointments:
 - After one renewal:
 - Written reasons for nonrenewal, if requested
 - After three or more terms of service in three years:
 - Adjusted standards for timely notice of nonrenewal (one month)
 - Right to petition a faculty committee to review allegations of inadequate consideration in nonreappointment
 - After seven years of service, including at least six terms or twelve courses:
 - either tenure or a “continuing appointment” (the right to a dismissal hearing before being replaced by part-time appointee with less service)

Research Department Resources

The materials under the [Research on Academic Freedom, Tenure, and Governance](#) section of the AAUP research department's web page provide important information about the **prevalence** of Association policies on campuses across the nation.

- Useful for identifying issues where institutions often fall short of our standards
- Useful for goading administrations to implement widely prevalent standards

[Policies on Academic Freedom, Dismissal for Cause, Financial Exigency, and Program Discontinuance](#)

Once the policies are in your handbook...

What now?

- Make sure they're upheld. Serve on senates and hearing bodies, read committee reports, just generally stay attuned to the climate for academic freedom and shared governance on your campus.

When they're violated:

- Point it out to your administrators and faculty governance bodies. Put your concerns in writing! Share widely!
- Build faculty support for corrective action.
- Exercise your local protections and rights of redress: hearings or appeals.
- Contact your state conference and staff at the national office

AAUP Membership

- The AAUP's work and assistance are made possible almost exclusively by member dues.
- Information about joining and member benefits is available at <https://www.aaup.org/membership>
- Information about starting a chapter on your campus is available at <https://www.aaup.org/membership/start-chapter>

Thank You!

<https://www.aaup.org>

<https://twitter.com/aaup>

<https://www.facebook.com/AAUPNational>

<https://academeblog.org/>